

REMARKS

Claim 1 stands rejected under 35 U.S.C. § 102(b) for asserted anticipation by Canadian Plant Breeder's Rights Grant No. 0618 in view of the following references:

1. Agriculture and Agri-Food Canada Strawberry Varieties Developed at Kentville page 3, March 19, 2003 (hereinafter referred to as the "Kentville reference").
2. University of Maine Cooperative Extension, Strawberry IPM Newsletter No. 6, pages 1 and 5, July 15, 1999.

These references are non-enabling publications and do not indicate public use or sale of 'Brunswick' in the United States more than one year before the filing of the instant application. The word "released" in the "Kentville reference" only indicates that the variety was first available for sale in Canada in 1999. The disclosure in the Strawberry IPM Newsletter is non-enabling and does not teach use of the new variety in the United States more than one year before the filing date of the instant application. Canadian Plant Breeder's Rights grant No. 0618 is non-enabling and does not indicate public use for sale of 'Brunswick' in the United States more than one year before the filing of the instant application, so a rejection under 35 U.S.C. § 102(b) is inappropriate.

'Brunswick' was first commercialized in Canada in 1999. It first became publicly available after May 3, 1999, only in Canada. This is the only public availability of 'Brunswick' anywhere in the world. 'Brunswick' has never been commercialized nor available for public use in any other country, including the United States. Therefore, because the new variety was never disclosed in an enabling publication, nor was it in public use or for

Application No. 10/073,438
Response to Office Action Dated July 22, 2003
In Reply to USPTO Office Action dated April 22, 2003
Attorney Docket No. 3139-012029

sale in this country, the rejection under 35 U.S.C. § 102(b) is wholly inappropriate.

Withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

In light of the foregoing, allowance of the claim is respectfully requested.

Respectfully submitted,

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